

MICHAEL A. DOTEN,
Petitioner,

vs.

JACK PALMER, *et al.*,
Respondents.

)
)
)
)
)
)
)
)
)

3:08-cv-00642-ECR-RAM

ORDER

/

This stayed action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by Michael A. Doten, a Nevada state prisoner. On November 13, 2009, this Court granted respondents' motion to dismiss, finding that Grounds One, Three, Four, Six, and a portion of Ground Five of the federal habeas petition are unexhausted. (ECF No. 21). The Court gave petitioner the option of abandoning his unexhausted claims and proceeding on his exhausted claims, or in the alternative, to seek a stay under *Rhines v. Weber*, 544 U.S. 269 (2005). (ECF No. 21). Petitioner filed a motion for issuance of a stay and abeyance order under *Rhines v. Weber*, so that he may return to state court to exhaust the unexhausted grounds of his habeas petition. (ECF No. 24). By order

1 filed April 5, 2010, this Court granted petitioner's motion and stayed this action to allow petitioner to
2 return to state court for the purpose of exhausting his unexhausted claims. (ECF No. 29).

3 Petitioner has filed a motion to reopen his case. (ECF No. 30). Attached to petitioner's
4 motion is a minute order of the state district court, dated August 25, 2010, indicating its finding that
5 petitioner's state court petition was untimely and successive, without good cause for the procedural
6 failings, and granting the State's motion to dismiss the petition. (ECF No. 30, at p. 2). Petitioner has
7 not demonstrated that he has exhausted his claims with the Nevada Supreme Court. A decision by
8 the Nevada Supreme Court regarding petitioner's unexhausted claims is required before this case
9 may be reopened.

10 **IT IS THEREFORE ORDERED** that petitioner's motion to reopen (ECF No. 30) this case
11 is **DENIED** as premature.

12 **IT IS FURTHER ORDERED** that petitioner may renew his motion to reopen this case
13 within **forty-five (45) days** of issuance of the remittitur by the Supreme Court of Nevada at the
14 conclusion of the state court proceedings.

15 Dated this 31st day of January, 2012.

16 
17 UNITED STATES DISTRICT JUDGE